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of the
Legislative Assembly of Manitoba
STANDING COMMITTEE
ON
STATUTORY REGULATIONS
AND ORDERS

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Speaker*



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FRIDAY, 22 MAY, 1981, 8:00 p.m.

MANITOBA LEGISLATIVE ASSEMBLY**Thirty - First Legislature****Members, Constituencies and Political Affiliation**

Name	Constituency	Party
ADAM, A. R. (Pete)	Ste. Rose	NDP
ANDERSON, Bob	Springfield	PC
BANMAN, Hon. Robert (Bob)	La Verendrye	PC
BARROW, Tom	Flin Flon	NDP
BLAKE, David	Minnedosa	PC
BOSTROM, Harvey	Rupertsland	NDP
BOYCE, J. R. (Bud)	Winnipeg Centre	Prog.
BROWN, Arnold	Rhineland	PC
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ENNS, Hon. Harry J.	Lakeside	PC
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HYDE, Lloyd G.	Portage la Prairie	PC
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ORCHARD, Hon. Donald	Pembina	PC
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PRICE, Hon. Norma	Assiniboia	PC
RANSOM, Hon. Brian	Souris-Killarney	PC
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SHERMAN, Hon. L. R. (Bud)	Fort Garry	PC
STEEN, Warren	Crescentwood	PC
URUSKI, Billie	St. George	NDP
USKIW, Samuel	Lac du Bonnet	NDP
WALDING, D. James	St. Vital	NDP
WESTBURY, June	Fort Rouge	Lib
WILSON, Robert G.	Wolseley	Ind

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Friday, 22 May, 1981

Time — 8:00 p.m.

CHAIRMAN — Mr. Albert Driedger (Emerson)

MR. CHAIRMAN: I call the committee to order. Committee adjourned at 5:30, we were dealing with Bill 21 and we adjourned on Page 7, Clause 9. There was an amendment under Clause 9.

The Minister of Health.

HON. L. R. (Bud) SHERMAN (Fort Garry): Well, if the understanding was that we were going to start at Clause 9 then I withdraw my intervention. I thought perhaps there was an understanding that we had completed consideration of Clause 9 and I was going to suggest that there's still, I think, some fine tuning that needs to be done on that clause and we should perhaps move on and come back to it. But if you're suggesting we were going to start right in on dealing with Clause 9, that's all right.

MR. CHAIRMAN: As far as the Chair is concerned, we had passed everything and we were dealing with Clause 9 when we adjourned. If that's acceptable, then we will deal with Clause 9 at this stage of the game. If it is the wish of the committee to revert to somewhere else, then I'd like direction.

MR. SHERMAN: No, that's all right. I was just going to suggest that we agree to disagree for the moment over Clause 9 and then come back to it. I didn't want the assumption made that we had cleaned up Clause 9.

MR. CHAIRMAN: My understanding is that we're dealing with Clause 9. Proceed? 9 — pass — the Member for St. Vital.

MR. D. JAMES WALDING: Mr. Chairman, I thought I just heard the Minister say that we would go on and come back to 9. So if we can leave that and perhaps proceed to 10?

MR. CHAIRMAN: It is not my understanding that that's what the Minister said, that he was prepared to deal with Clause 9 at this stage of the game. If I am in error I stand to be corrected.

The Honourable Minister of Health.

MR. SHERMAN: That's correct, Mr. Chairman. My concern — and I guess it was unfounded — was that there might have been a feeling that we had dealt with Clause 9. If that was the case, I was going to say we would like to re-open it but I don't want to pre-empt moving on to subsequent clauses as long as we can come back to it.

But my intervention was not necessary, Mr. Chairman, because you've called Clause 9.

MR. CHAIRMAN: We are dealing with Clause 9 and there was an amendment read into Clause 9. Clause 9 as amended — pass — the Member for St. Johns.

MR. SAUL CHERNIACK: I agree with the Minister. I think we have to back up a bit and reconsider the wording because I don't think it was that clean. A fine tuning is what it does need and I know Mr. Balkaran has been working on it, I just talked to him a few minutes ago. If he's ready he may have a suggestion. He had, may I say, what I think was a very good suggestion and I said I didn't think you could sell it to the physiotherapists because in his section he wasn't mentioning the word physiotherapy, but I think he was doing a good job in defining what we had in mind. I think when he's ready he should read us what he did, because he felt what he should do is refer to a member, and the word member would do all the protecting that he wanted to, and what we wanted. I wasn't sure whether they wouldn't like that word physiotherapy thrown into the section so I think we ought to hear what Mr. Balkaran says and see what . . .

MR. CHAIRMAN: It is my understanding that we had an amendment already read into the record on Clause 9 and we're prepared to consider further discussion and amendments on Clause 9.

The Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I move that we re-open 9. I don't know who moved the amendment but let's withdraw the amendment and start right.

MR. CHAIRMAN: To the Member for St. Johns, we did not pass Clause 9. There was an amendment read into the record, there was discussion on it and we'll proceed from there.

Is it the desire of the committee to have the amendment that was presented read into the record again?

The Minister of Health.

MR. SHERMAN: Mr. Chairman, could you refresh my memory as to who moved the amendment? Was it me? Was it Mr. Anderson? Well I would request that you re-read that amendment and we'll consider whether Mr. Anderson wishes to withdraw it at this juncture.

MR. CHAIRMAN: The Member for Springfield.

MR. ROBERT ANDERSON: Mr. Chairman, I moved that the first line of Section 9 of Bill 21 as printed be amended by striking out the words "no person shall practise or offer to practise" and substituting therefor the words "no person shall practise physiotherapy or offer to practise physiotherapy".

MR. CHAIRMAN: Mr. Balkaran.

MR. ANDREW BALKARAN: Mr. Chairman, that was the first amendment that was moved that was defeated. The second amendment read as follows, I've got it scrawled in my own handwriting. Unfortunately I don't have the name of the mover.

MR. SHERMAN: I think it was me, Mr. Chairman.

MR. BALKARAN: That was passed and it read as follows: That printed Section 9 of Bill 21 be amended

(a) by adding thereto immediately after the word "practise", where it appears for the first time in the first line thereof, the words, "as a physiotherapist", and

(b) by adding thereto immediately after the word "practise" where it appears for the second time in the first line thereof, the words, "as a physiotherapist". That one was passed but because of the change to the definitions of "member" and "physiotherapist", it now poses a problem. It seems that amendment that was adopted has now given exclusivity to the physiotherapist.

MR. CHERNIACK: Mr. Chairman, the information I have is not secret. Mr. Balkaran has been working on an amendment. I think we ought to hear what he is suggesting and then go from there because I think he's right, I think we changed it by changing the definitions.

MR. SHERMAN: I think also, Mr. Chairman, that there was a further amendment suggested just before we rose at 5:30. Whether that's on the record or not, I can't say.

MR. BALKARAN: Mr. Chairman, during the supper break I was giving this some thought and I thought we could re-write Section 9 in its entirety to read as follows:

"No person shall hold himself out or represent himself as a member or use any designation that conveys or is likely to convey the impression that he is a member unless he is registered under the Act."

I wrote that out keeping in mind the definition of member as meaning a physiotherapist whose name is entered in the register.

MR. CHAIRMAN: The suggested amendment, is that acceptable? The Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I believe that's exactly what we are getting at but I also suspect — now why should I say that — I believe that's what were getting at. I don't know if other members of the committee agree with that because we know a member is a physiotherapist whose name is entered in the register and that is the only person who has the right to hold himself out to be practising in the practice of physiotherapy — and that's the only one — which means that any person who may be a physiotherapist such as the example I gave, or anybody who manipulates or massages or whatever may not pose as a member which means they may not pose as a physiotherapist but can do the work.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, just in case that initial suggestion of mine is not acceptable to the association and to the members of this committee or both, I just now finished re-writing an alternative Section 9 which reads as follows:

"No person shall engage in the practice of physiotherapy or offer to practise physiotherapy or hold himself out as a person

entitled under this Act to practise physiotherapy or use any designation which conveys or is likely to convey the impression that he is entitled to practise physiotherapy unless he is registered under this Act".

MR. CHAIRMAN: To members of the committee, is that acceptable? The Minister of Health.

MR. SHERMAN: I would like to have the Legislative Counsel re-read his first amendment, Mr. Chairman.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: "No person shall hold himself out or represent himself as a member or use any designation that conveys or is likely to convey the impression that he is a member unless he is registered under this Act".

MR. SHERMAN: I think that's better than the second one.

MR. BALKARAN: Well, I gave you two alternatives.

MR. CHAIRMAN: To the members of the committee . . .

MR. SHERMAN: I would like to ask legal counsel of the association if they have any comment on that, Mr. Chairman.

MR. CHAIRMAN: Is Mr. Balfour prepared to make a comment on the matter?
Mr. Balfour.

MR. DAVID BALFOUR: Thank you, Mr. Chairman. I am wondering if we may please ask that the second alternative be read once more. I don't think we've got it all down.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Do you want me to re-read it, Mr. Balfour?

MR. BALFOUR: Yes, re-read the second alternative.

MR. BALKARAN: "No person shall engage in the practice of physiotherapy, or offer to practise physiotherapy, or hold himself out as a person entitled under this Act to practise physiotherapy, or use any designation which conveys or is likely to convey the impression that he is entitled to practise physiotherapy, unless he is registered under this Act".

MR. SHERMAN: Does that not confer exclusivity?

MR. BALKARAN: No, they both say the same . . .

MR. CHERNIACK: I think they both mean exactly the same thing only the second is more awkward than the first. The first is very clear. The second, I think, accommodates their desire to deal about the practice of physiotherapy but all it does is to say, you may not claim that you are practising physiotherapy which is in the definition described. But what the Minister is concerned about and rightly

so — I would hate to think that there is any danger — that no one may claim they are practising physiotherapy.

I think that's true, I think we don't want anybody to say, I am practising physiotherapy unless that person is registered. But anybody can indeed do all the things that a physiotherapist does and do it for gain as long as that person doesn't claim that he is practising physiotherapy. We have to be careful but I think that's right.

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: That's my concern about the initial wording in the second proposed amendment by the Legislative Counsel — and it may be that I just haven't grasped it yet, Mr. Chairman, that's very likely — but it seemed to me that's what that second amendment does. It says, "No one may engage in the practice of physiotherapy or", etc., etc., and that seems to me to confer exclusivity.

For the sake of the committee, Mr. Chairman, let me eliminate the consequent clauses. The second one, I think, although it may be a little awkward as Mr. Cherniack suggests, does protect us against that.

MR. CHERNIACK: The first one's not awkward, it's the second one.

MR. SHERMAN: No, the first one, you're right, it's the other way around.

MR. CHAIRMAN: Mr. Balfour, is that acceptable?

MR. BALFOUR: Thank you, Mr. Chairman, yes the association prefers the first of the two suggested by Mr. Balkaran.

MR. BALKARAN: That is, "no person shall hold himself out as a member".

MR. CHAIRMAN: Is that agreed? Moved by the Member for Springfield, the amendment as read.

MR. BALKARAN: Shall I read it again?

MR. CHERNIACK: I'd like to write it out because I think it would be useful for other purposes.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: "No person shall hold himself out, or represent himself, as a member, or use any designation that conveys or is likely to convey the impression that he is a member, unless he is registered under this Act."

MOTION presented and carried.

MR. CHAIRMAN: The Member for St. Vital.

MR. WALDING: Mr. Chairman, just before we adjourned at 5:30, we were also discussing the definitions of "member" and "physiotherapist" and I'm not sure whether we agreed to changes in those definitions or not and if so, what they were.

MR. CHAIRMAN: We had covered the definitions under Clause 1 before we moved on to Clause 9.

MR. CHERNIACK: To satisfy Mr. Walding, could we hear the definitions of member and physiotherapist?

MR. CHAIRMAN: Legal counsel, Mr. Balkaran.

MR. BALKARAN: The definition of member reads as follows:

member means, "the physiotherapist whose name is entered in the register";
physiotherapist means, "a health professional who is duly qualified to practise physiotherapy"; strike out the rest.

MR. CHAIRMAN: Does that clarify that for the Member for St. Vital? Can we proceed with Clause 9 as amended? Is that agreed? (Agreed) 9 as amended — pass.

MR. WALDING: I think we reached 13(2), Mr. Chairman.

MR. CHAIRMAN: Clause 10 — pass; Clause 11 — pass; Clause 12 — pass; clause 13(1) — pass; 13(2) — pass — the Member for St. Vital.

MR. WALDING: Mr. Chairman, this is what took us back to the definition section in 9, the fact that the words physiotherapist was used in 13(2) and the word member was used in 13(1).

I wonder if I could get clarification from Mr. Balkaran if there is still the need for uniformity or whether it is now still proper to use physiotherapist.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: I think for the sake of uniformity with subsection 1 at least, it might be better to change "physiotherapist" in the first and third lines to "member".

MR. WALDING: I know we discussed it. I don't recall it being moved and adopted as an amendment.

MR. CHAIRMAN: The Member for Springfield so moves that the "physiotherapist" in the first and third line gets changed to "member". Is that agreed? (Agreed) 13(2) — pass as amended; 13(3) — pass — the Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I don't like (b).

MR. CHAIRMAN: 13(3)(b) — the Member for St. Johns.

MR. CHERNIACK: This can be punitive. "The board on such grounds as it deems sufficient may cause the name of a person removed, thereto either without fee or upon payment of a sum not exceeding the fees or other sums in arrears". Why do they want more money? If they want to put him in jail, then they've got to do something else about it but now it's an additional imposition. You've renewed your right to come back in and we will — such additional sum unlimited? Even limited I would disagree with — and may I say I just found it in The Registered Dietitians Act and I'll bet I'll find it in the nurses. Well it's a little bit better because in the Nurses and the Dietitians it says, "Such additional sums as may be

prescribed by the by-laws". That's a little better, I don't like it but we passed them already. But in this one they say "additional sums may be prescribed by the board", which implies different treatment for different people, the possibility of.

So although I really would like to eliminate (b), the least I'd like to do is to change it to say, the wording in these other sections, "as may be prescribed by the by-laws of the association."

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: That's agreeable, Mr. Chairman. "As may be prescribed by the by-laws of the association", which is in conformity with The MARN Act.

MR. CHAIRMAN: 13(3)(b) — the Member for St. Vital.

MR. WALDING: Mr. Chairman, can I ask Mr. Balkaran whether (a) and (b) are interchangeable or both together? Should it be (a) and (b), or (a) or (b)?

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: It should be "and".

MR. CHERNIACK: "As may be prescribed by the by-laws of the association."

MR. CHAIRMAN: Are we treating that as an amendment?

MR. BALKARAN: Yes.

MR. CHAIRMAN: 13(3)(b) as amended by the Member for Springfield, is that agreed? (Agreed) 13(3) — pass; 13 — pass; 14 — pass. Order please. My understanding is there's an amendment under 15. It was the understanding of the committee that we go by the original numbers.

MR. ANDERSON: Under re-numbered 15.

MR. CHAIRMAN: It was the understanding of the committee that we go by the original numbers.

MR. ANDERSON: Mr. Chairman, I move that re-numbered Clause 15(a) of Bill 21 be amended by adding thereto immediately after the word "physiotherapist" therein the words "at the time of employment".

MR. CHAIRMAN: Agreed? (Agreed)
The Member for Springfield.

MR. ANDERSON: Mr. Chairman, I move THAT renumbered Section 15(b) of Bill 21 be amended by striking out the words "unilaterally" from the first line thereof and further by striking out the words "any reason including" from the second line thereof.

MR. CHERNIACK: I'd like to ask why the term "unilateral" is being removed. I don't object to it being removed, I don't understand why it's being removed.

MR. SHERMAN: I'd have to ask legal counsel, Mr. Chairman. My impression would be that this would

presumably make it a decision with some authoritative justification and avoid the possibility of personal vindictiveness, but I would ask the association to comment.

MR. CHAIRMAN: Mrs. Le Pers.

MRS. SHIRLEY Le PERS: "Unilaterally" is being removed to bring it in conformity with MARN and the other Acts that we've been talking about.

MR. CHAIRMAN: Section 14 as amended — pass; Section 15 — pass; Section 16 — pass — the Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I have a note here on that. The word "causes or knowingly permits", I don't remember who suggested that. It also is in the MARN bill "knowingly permits" but the word "knowingly", I move they be included; that MHO did ask for it, and I agree with that.

MR. SHERMAN: I'm sorry we didn't have a printed motion to amend that clause. It should be amended, Mr. Chairman.

MR. BALKARAN: Under Section 16?

MR. CHERNIACK: Section 16, on the third line after the word, "or", to insert the word "knowingly".

MR. CHAIRMAN: Section 16 as amended — pass — agreed? (Agreed) Section 17(1) — the Member for Springfield.

MR. ANDERSON: Mr. Chairman, I move that Section 17 of Bill 21 as printed be struck out.

MR. CHAIRMAN: Is that agreed? (Agreed) Section 18 — pass; Section 19 — the Member for Springfield.

MR. ANDERSON: Mr. Chairman, I move that Section 19 of Bill 21 be amended by striking out the words "of physiotherapy" in the second line thereof and by inserting the words "physiotherapy education" in the second line immediately prior to the word "programs".

MR. CHAIRMAN: Section 19 as amended — pass; Section 20 — pass; Part IV 21(1) — pass; 21(2) — pass — the Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I see the nurses provision makes more sense than the Lieutenant-Governor-in-Council. It says the Minister, and I really don't think the Cabinet should be bothered with something like this. I think the Minister should do the appointing and be done with it.

I think legislators are sometimes too prone to say we'll give it to the Lieutenant-Governor-in-Council to do and that just loads up the agenda.

MR. SHERMAN: It's probably easier, Mr. Chairman.

MR. CHERNIACK: Sure. Well the nurses say, "(2) who shall be appointed by the Minister."

MR. CHAIRMAN: Is that an amendment? Amendment on Section 21(2).

MR. CHERNIACK: Mr. Chairman, may I suggest again for brevity, at the end of 21(1)(c) you could say, "two lay members who shall not be members of the board and who shall be appointed by the Minister." It's very similar to the MARN and then you don't need that 21(2) at all.

MR. SHERMAN: Agreed.

MR. CHAIRMAN: Order please. The Minister of Health, could you indicate the nature of the amendment under 21(1)(c)?

MR. SHERMAN: 21(1)(c) would read "two lay members who shall not be members of the board and who shall be appointed by the Minister."

MR. CHAIRMAN: And further that 21(2) is deleted?

MR. SHERMAN: Correct.

MR. CHAIRMAN: Is that agreed? (Agreed) 22(1) — pass; 22(2) — pass; 22 — pass; 23 — pass. Part V, Clause 24 — pass; 25 — pass — the Member for St. Johns.

MR. CHERNIACK: No, I just want to read it.

MR. SHERMAN: Perhaps the unacceptable or at least the questionable language that we dealt with last night either in The Medical Act or The Pharmaceutical Act, Mr. Chairman, on this one and I suggest it should be made to conform. In that instance the point was made that it could hardly be an opinion of the complaints committee whether someone had been convicted of an indictable offence and we would put the provision in, in terms of the complaints committees being informed or advised of, or made aware of.

MR. CHAIRMAN: The Member for St. Johns.

MR. CHERNIACK: I'm reading from The Medical — "where the complaints committee or the registrar are informed that a member

(a) either before or after he became a member has been convicted, alleged to be guilty, is alleged to have demonstrated" — yes, that's the difference in the wording.

Where the words "in the opinion of" were struck out and after the word "registrar" the words, "are informed that" was inserted. —(Interjection)— I guess is, we said, are. "The complaints committee or the registrar is informed that".

MR. CHAIRMAN: The amendment as moved by the Member for Radisson, is that agreed on?

MR. BALKARAN: "Is informed that".

MR. CHAIRMAN: Clause 25 as amended — pass. (Agreed) Clause 26 — pass; Clause 27 — the Member for Radisson.

MR. ABE KOVNATS: Mr. Chairman, I move

THAT Section 27 of Bill 21 be amended by adding the words, "or person", in the third line thereof immediately after the words, "other member."

MR. CHAIRMAN: Agreed?

MR. CHERNIACK: I'm sorry, is that 26 or 27, Mr. Chairman?

MR. CHAIRMAN: Clause 27. The Member for St. Vital.

MR. WALDING: Just for clarification, Mr. Chairman, was the provision in other Acts including the nurses, that the investigation chairman report to the board or is it directly to the discipline committee? If that's the right name for it. Is that not another step we put in?

MR. SHERMAN: I am just checking it. I don't think it is clearly spelled out in The MARN Act, Mr. Chairman, but in practice what happens is the investigation chairman reports to the board.

MR. CHERNIACK: In The Medical Act it's, "shall report to council."

MR. SHERMAN: Yes, in this case it would be to the board.

MR. CHAIRMAN: Order please. For the sake of the Chair and Legal Counsel can you clarify where we're at? The amendment on Clause 27 was read into the record. Is that what we're dealing with?

MR. WALDING: I'm still on 26, Mr. Chairman.

MR. CHAIRMAN: For my benefit, are we back on Clause 26? The Minister of Agriculture.

HON. JAMES E. DOWNEY (Arthur): The Member for St. Vital wants to be clear on Clause 26, and we are waiting for him to get that clearance.

MR. WALDING: One reason why I ask is that under 40(1) there is an appeal from the discipline committee to the board. Now if the report of the investigation chairman is to the board, then the board would consider the matter before directing that either no further action be taken, or direct an investigation to be held, so they would be discussing a matter on appeal, the same matter that they had discussed earlier on a preliminary matter. Now I am wondering if that's entirely proper or in accordance with normal judicial practice.

MR. CHAIRMAN: Is somebody prepared to answer the question? Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, I would like to ask Legislative Counsel under The MARN Act passed last year, whether I am correct and whether we are correct in assuming that the investigation chairman reports to the board. I may have missed it but it seems to me that that Act is silent on that specific point.

The reason I ask the question is because under MARN the appeals are to the board. I think Mr. Walding had raised the question with respect to 40(1) here, which we haven't come to yet, where you appeal to the board, but under MARN you appeal to the board.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I think we are dealing with two things here. Under 26, the

investigation chairman may direct an investigation be held by the registrar or its appointee, so that 31 says where the investigation is carried out by the registrar, (a) and (b) are the action he will take.

Under 26, where the investigation chairman reports to the board is pursuant to a reference under 25, I think.

MR. CHAIRMAN: The Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, may I point out to Mr. Sherman under the MARN bill it's the chairman that makes the decision about dropping it or proceeding and therefore he doesn't report to anybody, he just reports his findings and his decision. It says, "there upon the investigation chairman" — you see now, the chairman instructs somebody to carry on an investigation which he himself can do too, I believe. Under 26, "the committee shall refer the matter to the chairman", and then 27, "he shall conduct an investigation or direct that it be conducted by the executive director", and then under 31, "upon conclusion of the preliminary investigation a written report shall be prepared" and that means either by him or for him and thereupon he decides.

Now that's in MARN. In this case, he's not given the right to decide, he just makes a report and the board decides and I'm beginning to think that Mr. Walding is right, that the board will then have already on its record that it made a decision to prosecute. Maybe we should stick with the MARN idea and say the investigation chairman shall decide, "shall direct that no action be taken or that there be an investigation."

You cut out a stage and you also eliminate their being caught into it.

MR. SHERMAN: I see the point, Mr. Chairman, and I think it would be advisable to conform to the format in The MARN Act.

MR. CHAIRMAN: Can somebody give the Chair direction as to what is the desire? The Minister of Health.

MR. SHERMAN: Yes, I think it should be changed but I need a few seconds, Mr. Chairman.

MR. CHAIRMAN: Order please. The Minister of Agriculture.

MR. DOWNEY: Mr. Chairman, the Minister of Health needs a couple of minutes to consider the amendment that he's preparing.

MR. CHAIRMAN: Agreed. The Minister of Health.

MR. SHERMAN: Mr. Chairman, I think we have to look at Part V from its inception, clause 24 and clause 25. Clause 24 as is, is all right and clause 25 as amended is all right, but I think we are going to have to rewrite clause 26. We can recommend clause 27, 28 and 29. We're going to have to rewrite 30(1) and 30(2) and clause 31 and 32 appear to be acceptable and I would suggest those that need to be rewritten, be written in the format contained in The MARN Act, under sections that carry similar headings, but that will take a few minutes to do.

MR. CHAIRMAN: Is it the understanding of the Chair that clause 26 is going to be amended?

MR. SHERMAN: Clause 26 will have to be amended.

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: Clause 26 would be written in similar fashion to clause 27 of The MARN Act and allowing for the fact that there might be slightly different terminology, this would be the sense of it.

"A preliminary investigation. Upon referral of a matter from the complaints committee, the investigation chairman shall conduct a preliminary investigation or direct that a preliminary investigation of the matter be held by the executive director or registrar, or by such other appointee as the investigation chairman sees fit."

That would be 26; 27, 28 and 29 would stand and 30 would be MARN's 31,

Action by person conducting preliminary investigation. "Upon conclusion of a preliminary investigation or written report of the findings shall be prepared and thereupon the investigation chairman shall decide that no further action be taken or decide that the matter be dealt with and proceed to an inquiry pursuant to Section 35."

The service of notice of decision by investigation chairman, section 32; 30(2) is new. That is not in The MARN Act and 31 and 32 appear to be all right, but that would be the format that the amendments would have to take, it seems to me.

MR. CHAIRMAN: Could the Minister of Health indicate on Clause 26, how we proceed from there so that we can keep some kind of a semblance of order here, if possible.

MR. SHERMAN: Well that's what I said. There may be slight variations in terminology but the sense of it is that Section 26 of Bill 21, would be rewritten to conform in sense to Section 27 of The MARN Act.

Section 30(1) of Bill 21 would be rewritten to conform in sense to Section 31 of The MARN Act and that would do it and it brings us down to 30(2) and there is no complementary, is there?

MR. CHERNIACK: That 31 takes in the whole thing in.

MR. SHERMAN: 31 takes the whole thing in, right. So 30(1) and 30(2) would be replaced by a section whose sense was complementary to the sense of Section 31 of The MARN Act.

MR. CHAIRMAN: Can you take the context of Clause 26?

MR. SHERMAN: Yes. It's very similar except for example there are some variations in terminology like Executive Director, but certainly the Legislative Counsel can pick that out very easily.

MR. CHERNIACK: If Mr. Balkaran is clear, as clear as I think I am, I think we can just leave it that way and let him do it at his leisure.

MR. CHAIRMAN: Mr. Balkaran, could you maybe indicate whether you have the concept of what has been proposed?

MR. BALKARAN: I think so, Mr. Chairman.

MR. CHAIRMAN: Can we proceed with Clause 26 as amended — pass; is that agreed? (agreed). Clause 27 as amended — pass; Clause 28 — pass; Clause 29 — pass; Clause 30(1).

MR. CHERNIACK: 30(1) is substituted by 31 of MARN.

MR. SHERMAN: 30(1) and 30(2).

MR. CHAIRMAN: Is that agreed that Section 30(1) and (2) be substituted for Clause 31? Is that agreed? (Agreed) So we would read it as 31 as amended — pass; Clause 32 — pass.

MR. CHERNIACK: Clause 31, Mr. Chairman, there they . . .

MR. CHAIRMAN: It was my impression that 31 replaced . . .

MR. CHERNIACK: 30(1).

MR. CHAIRMAN: My apologies, 30(1) and 30(2) will be replaced by Clause 31 of The MARN Act.

MR. SHERMAN: That's right.

MR. CHAIRMAN: The Minister of Agriculture.

MR. DOWNEY: I understand we can proceed with 31 on Page 12 of Bill 21, which we're dealing with.

MR. CHAIRMAN: Clause 31 — pass — the Member for St. Johns.

MR. CHERNIACK: I'm sorry, I'm looking at MARN. There the appeal is to the discipline committee, here the appeal is to the board. I don't know why they made that change. As a matter of fact, the wording is a little different and I don't know why that's different although I don't think that matters. But the principle is quite different.

I think it should go to the discipline committee as MARN did, but I don't know the reason for the change.

MR. SHERMAN: Could we ask Mr. Balfour if there is a rationale for that, Mr. Chairman?

MR. BALFOUR: The association felt that the board would be the more appropriate body to hear the appeal, however they have no objection to the appeal from the investigation chairman going to the discipline committee if that is the wish of this committee.

MR. CHAIRMAN: Is there a proposed amendment on Section 31?

MR. CHERNIACK: Mr. Chairman, I'm waiting for the Minister. I think there is an amendment.

MR. SHERMAN: Yes, Mr. Chairman, Section 31 of Bill 21 should be replaced with a section written to conform to the sense of Section 32 of The MARN Act.

MR. CHAIRMAN: Proposed amendment is that Section 31 be replaced by Section 32 of The MARN Act. Is that agreed? (Agreed)

Section 31 then as amended — pass; Section 32 — pass. Part VI, Clause 33(1) — pass; (2) — pass; (3) — pass; (4) — pass; Section 33 — pass. Clause 34 — pass; Clause 35(1) — pass; (2) — pass; (3) — pass; (4) — pass.

MR. CHERNIACK: I'm sorry, Mr. Chairman, I can't go that quickly.

MR. CHAIRMAN: I'm trying to be as slow as I can be.

MR. CHERNIACK: You are but I'm afraid I'm slower.

MR. CHAIRMAN: Can the member indicate when we can proceed? Mr. Walding.

MR. WALDING: Mr. Chairman, the practical suggestion was that if you simply call the clause numbers, we'll say pass when we're ready to move on to the next one.

MR. CHAIRMAN: Very agreeable.
Mr. Balkaran.

MR. BALKARAN: Just a question, was Section 34 passed?

MR. CHAIRMAN: Yes.

MR. BALKARAN: Then may I . . .

MR. CHERNIACK: No. That's exactly where I'm stuck and we can't let it go. It's wrong. — (Interjection)— Well, it's wrong because we've changed 31 and referred it to MARN and now we're talking about the board.

MR. SHERMAN: It has to conform to Section 35 of The MARN Act.

MR. CHERNIACK: I may be slow, buddy, but . . .

MR. SHERMAN: Upon receipt of a notice of appeal by a complainant, pursuant to Section 31, the discipline committee shall consider the matter, the recommendation of the complaints committee and the report on the preliminary investigation and shall
(a) direct that no further action be taken or
(b) direct that the matter be dealt with and proceed to an inquiry pursuant to Section 35.

MR. CHAIRMAN: The proposed amendment on Section 34, is that agreed?

MR. CHERNIACK: To comply with Section 35 of MARN, right?

MR. SHERMAN: To incorporate the sense of Section 35 of The MARN Act.

MR. BALKARAN: Mr. Chairman, I wonder if in attempting to achieve uniformity with MARN or with The MARN Act, and in making those wholesale changes in some of those sections, I hope we are not going to confuse this bill in such a way that it

becomes senseless in that area because as bad as it is, there's some sequence to it. I don't know if we've had enough time now to take those sections and dovetail them into this bill to see that the sequence or the proceedings flow one into the other. I just caution you against that danger, there might be that result.

MR. CHERNIACK: Isn't that why we're doing it rather slowly?

MR. BALKARAN: I'm having difficulty trying to see whether it really fits.

MR. CHERNIACK: It's not just for the sake of uniformity as I see it, it's for the sake of in this case, what we're dealing with now is keeping away from the board those intermediate actions which will later be reviewed by the board and the desire I think is correct, and we have to do it. I had the impression we were accomplishing it but if we're not, we've got to slow up.

MR. SHERMAN: I appreciate Mr. Balkaran's warning and certainly we have to be on the alert for that kind of thing but I can't see where we have veered into that kind of danger area at the moment because we're dealing with procedures for complaints, investigation and enquiries that is a procedure which is not specific to one particular health profession.

I think there certainly would be sections of the bill or parts of the bill that would not be translatable but I believe in these particular parts translation from one bill to another should be possible, Mr. Chairman. I'm just checking the other sections in the MARN Act and for example under this Part VI Discipline Committee in Bill 21 would follow down, except for some rearrangement of order, precisely with the subject areas that are dealt with under the Discipline Committee part of the MARN bill. So I don't think we're likely to get into any difficulty doing what we're doing.

MR. CHERNIACK: I'd like to express my sense of regret that having had this MARN bill as a precedent that there was shuffling around without proper review or consideration and it makes it so much more difficult when we did establish something not to have anything to alert us to change us so that we can consider the changes. Actually we have to read the specifics to see where they differ. Now that I've said it, I don't know what good it does to have said it except I feel better.

MR. CHAIRMAN: Is it the understanding of the Chair that Clause 34 is going to be rewritten according to clause 35 of The MARN Act? Is that agreed that Clause 34 be amended and rewritten according to Clause 35 of The MARN Act? Agreed? (Agreed) — pass.

MR. CHERNIACK: I want to make a suggestion to the Minister just in case Mr. Balkaran's warning is justified, it might be advisable to make this bill come into force on proclamation to give a leisurely review, say in the next month or so, just to make sure that there are no errors, if there is that concern. I hope that's not justified.

MR. BALKARAN: The bill comes enforced in proclamation anyway.

MR. CHERNIACK: Oh, well, good.

MR. SHERMAN: It's a good point and it's covered I think, in the last clause of the bill, Mr. Chairman.

MR. CHAIRMAN: 34 as amended — pass; 35(1) — the Member for St. Johns.

MR. CHERNIACK: I try to compare it with 36. I've not succeeded yet in understanding just where the difference is between 35 here and 36 of MARN. It ought to be the same but it isn't.

MR. BALKARAN: That's why I say, Mr. Chairman, I think that the association has written in a procedure that they think is acceptable to them and in language I think that is acceptable to them and I'm leery that we might just by transferring some of those provisions in MARN, might disturb the logical sequence for the progression of how complaints are handled in this bill.

MR. SHERMAN: Mr. Chairman, I believe and I know I made the point last night and I stick by it, that our health profession legislation does not have to be precisely uniform, word for word, but I do think we laid down some principles last year particularly with respect to these areas having to do with complaints, discipline and enquiries, and I think it would be preferable to have the wording conform. Mr. Chairman, I apologize to the committee for the fact that it does not conform more precisely than it does and I would certainly be prepared to suggest that again on a section such as 35(1) that we'd be looking at wording that conforms to 36(1) of The MARN Act. Now if there's a difficulty in the time frames or the way that it's worded the Legislative Counsel to the association can certainly apprise me of that before the bill reaches third reading stage in the House, but I think we should work to that conformity in this committee.

MR. CHAIRMAN: What is the suggestion then, that we proceed with 35(1)?

The Member for St. Vital.

MR. WALDING: Mr. Chairman, I share Mr. Cherniack's difficulty with 35(1) as printed in Bill 21 — I'm not sure in reading it — that it would flow logically from the MARN Section 35 that we're putting into 34. The MARNs 36(1) would seem to flow quite simply and is readily understood that if the Discipline Committee has ordered the matter be dealt with and proceedings be undertaken for an enquiry, then you go logically into the setting of a date, time and place for the holding of the enquiry. I'm not sure what 35(1) does or commits.

MR. CHERNIACK: Just to support that and in support of the Minister, 35(1) is not a logical sequence to 34, which we've just wiped out because it refers to - "an enquiry is directed by the investigation chairman"; but 34 says "the board shall decide". I'm sorry to say I think the draftsmanship is not good enough to stand on its own anyway.

MR. SHERMAN: Mr. Chairman, 36(1) of The MARN Act does flow logically from 35 and we have now put MARNs 35 in here where 34 was. So what I'm

suggesting is that 36(1) of The MARN Act or wording to the same sense, replace 35(1) in this Act and if there is some difficulty perceived by the legal counsel to the association in the interim then I would have to bring an amendment into the House on third reading. I don't anticipate that there will be but I think that option has to be recognized.

MR. BALKARAN: Mr. Chairman, what concerns me now, personally that is because I'll have to get in touch with counsel for the association and see how we could dovetail these pieces into this bill. First is time, second is stenographic assistance and it may very well be that all of Part V and Part VI have to be rewritten and as Mr. Tallin suggested, what we're trying to do is put chrysler parts into an austin.

MR. CHERNIACK: I drive a Chrysler and I don't see why anybody else shouldn't be able to if they can. I really don't even know the need to consult the association's counsel. It seems to me that a pattern has been defined as to how you deal with complaints and if it's right for one profession it should be right for another. Now I sympathize with Mr. Balkaran's problem and from my standpoint with all due deference to all the work that has been done, if it's not adequate, if the session has to end before it's polished out then that's the way the ball bounces, but if changes were made, then they were made.

I know that this bill has been in our hands for a long time, we didn't get around to it. However, it's Mr. Sherman's problem.

MR. SHERMAN: All we can do is proceed to attempt to expedite passage of the bill in a manner that is acceptable to the Legislature and through it to the people of Manitoba as expeditiously as we can. I'm suggesting that some changes be made and hopefully they can be made in time to get the bill into the House for third reading. That remains in the realm of speculation at the moment, but I think the changes are necessary. I would agree that the section should conform to the methodology that was painstakingly worked out last year with respect to the other health professions and I think we should proceed on that basis. Now if it's simply a cut and paste job the amended bill can be back in front of everybody by 12 noon on Monday; if it's more than that then it obviously won't make it to third reading and I think everybody has to live with that.

MR. CHAIRMAN: Can the Minister of Health indicate as to what the procedure of the Chair should be? Are we proceeding with 35(1)?

MR. SHERMAN: Proceeding, I suggest Mr. Chairman, by substituting for 35(1) a section that is equivalent in sense to Section 36(1) of The MARN Act.

MR. CHAIRMAN: The suggested amendment, is that agreed? 35(1) as amended — pass; 35(2) — pass. The suggested amendment on 35(2) to conform with 36(2) of The MARN Act. Is that agreed? 35(2) as amended — pass; 35(3) — pass; (4) — pass.

MR. SHERMAN: Is 35(3) acceptable on the date in which it was post-marked?

MR. CHERNIACK: Yes, because it was 31 days. The last time we dealt with it there were 14 days.

MR. CHAIRMAN: 35(3) — pass; 35(4) — pass — the Member for St. Vital on 35(4).

MR. WALDING: MARN's 36(3) effective date of service makes it in accordance with subsection (2). I wonder if subsection 2 ought to be so noted in here under our 35(3)?

MR. BALKARAN: I didn't get the question, Mr. Chairman.

MR. WALDING: Under the heading effective date of service in MARN's 36(3) there is reference to subsection (2) and their effective date of service in this bill under 35(3) doesn't refer to subsection (2). Now is that needed in there?

MR. SHERMAN: The wording is slightly different. MARN's wording is "notice sent by post" in accordance with subsection (2). This wording is "a notice so sent by post" so it's referring quite directly to the notice referred to in 35(2) as it appears in the bill.

MR. CHAIRMAN: 35(3) — pass; 35(4) — pass; 35(5) — pass; 35(6) — pass; 35(7) — pass — the Member for St. Johns.

MR. CHERNIACK: There will also be an amendment there. After the word "attend" in the 2nd line the phrase that I have written down from the Medical Bill, "and has not provided a reasonable excuse for his failure to attend".

MR. CHAIRMAN: Could we for the purpose of legal counsel and the Chair, could we have that amendment clarified?

MR. CHERNIACK: After the word "attend" in the second line, to insert . . .

MR. CHAIRMAN: 35(7)?

MR. CHERNIACK: 35(7), that's what you called. To add the words "and has not provided a reasonable excuse for his failure to attend".

MR. SHERMAN: Incidentally, that's not in The MARN Act, but it is in the bills we've dealt with this week.

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 35(7) as amended — pass; 35(8) — pass; 35(9) — pass; 35(10) — pass; 35(11) — pass — the Member for St. Johns.

MR. CHERNIACK: Just a minute please.

MR. CHAIRMAN: 35(12) — pass; 35(13) — pass; 35(14) — pass; 35(15) — pass; 35(16) — pass; 35(17) — pass; 35(18) — pass; 35 as amended — pass; 36(1) — the Member for Radisson.

MR. KOVNATS: Mr. Chairman, I move

THAT subsection 36(1) of Bill 21 be amended by adding thereto at the end thereof the words "or the Court of Queen's Bench".

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 36(1) as amended — pass; (2) — pass; (3) — pass; (4) — pass; 36 — pass; 37 — pass; 38 — the Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I wonder do we have anything comparable to 37 anywhere? I don't see any of these recent ones on suspension in The MARN Act. It doesn't mean that they're bad. Oh yes, I think I do see it now. It's out of order, it's not in order.

MR. SHERMAN: It's not the same continuity but it's there.

MR. CHERNIACK: I'm looking for the effect of suspension. I thought a suspension is not any complete erasure or expulsion. I think a member is still a member, although suspended. I don't know why they need this and I'm looking for it in MARN. I haven't found it yet.

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: I'm not commenting yet, Mr. Chairman.

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: I would request that Mrs. Le Pers be asked to speak to that point.

MRS. Le PERS: All section 36 and 37 is different from The MARN Act. It is new. It is more in keeping with what is in The Medical Act for these clauses.

The reason for this is, that if we have a person up for an inquiry and we feel that the reason for the inquiry is sufficient that it would be in the public's interest if this person was suspended until the matter was resolved; that we want the ability to suspend them while the inquiry is being organized and conducted; and 37 is to lay down the effect of what that suspension would be during this time.

MR. CHAIRMAN: The Member for St. Vital.

MR. WALDING: Mr. Chairman, I'd like to direct a question to Mr. Balkaran. If 37 erases the name of the member from the register, that person is no longer registered and is no longer subject to any actions that the association may take, so that member could not be summoned to the board or any other actions taken then.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Balfour wants to respond.

MR. CHAIRMAN: Mr. Balfour, would you want to respond?

MR. BALFOUR: Thank you, Mr. Chairman. The association felt there was a bit of a hiatus as to what happens when a person is suspended. I must say I concur in the comments I've heard here on that section.

We were looking at The Medical Act, Section 56, "where the licence of a member of the college is suspended that member shall not be entitled to practise medicine for so long as the suspension

continues", and really I guess we probably should have used that precise language because we felt that there was a discrepancy in MARN, in that the consequences of suspension weren't spelled out.

MR. CHAIRMAN: The Member for St. Johns.

MR. CHERNAICK: I guess it's still sticking in my mind this comparison of a Chrysler with a Volkswagen, is it? The medical profession has exclusivity of practice. They can suspend a person and that person can't practise. If I were a physiotherapist, registered as a member and you were inquiring as to my offensive actions and suspended me and made me no longer a member, I can go out and continue to work for the same hospital if they'll have me and I'll just say, don't call me a physiotherapist please. Because all you're doing in this Act is to control the title, reserve of title, that's all and there's nothing to prevent that very person doing all that work and just not calling it physiotherapy.

I'm beginning to think and maybe I should have said it, when I was told by the dietitian that they could kill somebody by a mistake. I didn't go along to that extent. I think a doctor can do a lot more damage than a dietitian could or with deference that a physiotherapist could.

I think that if you're going to bring down the boom on them — it seems to me it's not pretentious but it's reaching, it's reaching to the medical profession's need for control, where I don't believe you have the same kind of need; but if you have, if you need it, then by all means if you suspend them and say by suspension you're erased, then you've lost all your control. You can't even hold a hearing anymore; they're not members.

MR. CHAIRMAN: The Member for St. Vital.

MR. WALDING: Mr. Chairman, one very distinct difference between this and The Medical Act, you may recall doctors have registration and an annual licence — and I believe it's the annual licence that is suspended — the member remains on their register as a member and they then can take action against one of their own members. You have just one of them, so once that's gone then your member is gone.

MR. CHAIRMAN: Mr. Balfour.

MR. BALFOUR: I concur entirely and the intent of the association really was that the suspension shall have the effect that the member shall not be entitled to practise physiotherapy during the tenure of that particular suspension. To say that the registration is erased or expunged, is obviously a mistake.

MR. CHAIRMAN: Is there an amendment on Section 37? The Minister of Health.

MR. SHERMAN: Well there will have to be. There will have to be but I don't see why — I'm just checking in the light of the discussions that have been held — why the clause is necessary at all? It seems to me that it's covered under 36(1) sufficiently, but I may be missing a fine legal point.

MR. CHAIRMAN: Is it the intention to remove Clause 37?

MR. SHERMAN: I would move that Clause 37 be struck out, Mr. Chairman, or just vote against it.

MOTION presented and defeated.

MR. CHAIRMAN: 37 is deleted. Clause 38(1) — pass.

MR. BALKARAN: There's some renumbering to be done, Mr. Chairman, as a result.

MR. CHAIRMAN: Moved by the Member for Radisson that renumbering take place, according to the deletion.

MOTION presented and carried.

MR. CHAIRMAN: 38(1) — pass; (2) — pass; (3) — pass; 38 — pass; 39 — pass; 40(1) — pass.

MR. CHERNIACK: You're ahead of me again.

MR. CHAIRMAN: I'm trying to be as slow as I can.

MR. CHERNIACK: What's the purpose of 39, I don't know.

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: I don't know. I'm checking the same question, Mr. Chairman. It doesn't conform to any similar section that I can find in the other health legislation but perhaps the association has a justification for it.

MR. CHAIRMAN: Mr. Balfour.

MR. BALFOUR: Thank you, Mr. Chairman. Section 39 really, we felt, was necessary because of Section 37 and the association would be in favour of Section 39 being deleted in view of 37 being struck out.

MOTION presented and defeated.

MR. CHAIRMAN: Clause 39 defeated. Do we need a further resolution to do the renumbering again? We'll do that at the end of the bill, is that agreeable? The Minister of Health.

MR. SHERMAN: Mr. Chairman, I want to re-open 38(3) for a moment, just to ask the question. The Discipline Committee may award costs, why would that not be the board that would award costs? These are costs that are incurred through disciplinary action and it should read I think, "which in the opinion of the board was considered unwarranted."

MR. CHAIRMAN: Are we dealing with an amendment on 38(3)?

MR. CHERNIACK: No, no, he's talking about the rebates, where they have been unfair. If they were wrong in prosecuting then he says the board should say, take your money back, not the committee. "May award costs", that's okay, but the reimbursement you think, should be the board's? Is that it?

MR. SHERMAN: The MARN Act vests both those responsibilities with the board. The board may award costs against any member. It may also reimburse any

member for costs incurred through disciplinary action "if in the opinion of the board the action was unwarranted." It seems to me this is what really should be intended here.

MR. CHAIRMAN: Can the Minister of Health suggest procedure?

Is the Member for Radisson moving an amendment accordingly? Legal Counsel has noted.

MR. KOVNATS: Yes.

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 38(3) as amended — pass; 38 — pass. Clause 39 has been defeated.

MR. WALDING: Hold on here just a minute until we discuss it a little bit further, Mr. Chairman. — (Interjection)— May I raise it with the Minister then?

MR. CHAIRMAN: The Member for St. Vital.

MR. WALDING: Mr. Chairman, if costs are to be awarded against or any member of the association following an inquiry by the Disciplinary Committee by the board, the board would then have to look at the facts of the case or at least make some assessment in order to decide whether costs were awarded one way or the other, yet there is still the avenue of appeal to the board, so again this duplication of consideration by the same body would arise. Would it not?

MR. SHERMAN: Well it depends on what costs you're talking about. We are talking about it seems to me, Mr. Chairman, costs incurred through disciplinary action and the board could well be hearing an appeal, that's right, and if in the board's opinion the disciplinary action was unwarranted, then it seems to me that the board would make the decision that the member of the association should be reimbursed for any costs that he or she incurred through that disciplinary action.

MR. WALDING: Okay, there's two aspects to this. If the action against the member is dismissed, then there is going to be no appeal to the board anyway so the board could consider making an award of costs to its member. But if the member is found guilty and there is perhaps to be an award of costs against him, then there still remains the possibility of an appeal to the board.

If the board says you are assessed the costs of this then they have obviously come to a decision as to whether the Disciplinary Committee was right or wrong, which doesn't bode very well for the hopes of the member who might wish to appeal to that board, that has already made a decision as far as his guilt is concerned.

MR. CHAIRMAN: The Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I think, Mr. Walding has persuaded me that maybe it's the MARN thing that's wrong because if you look at 40(1), the very next section, "appeal to the board" — any person may appeal to the board. Now it seems to me that if the disciplinary action has been

dropped and they find that the person was unjustifiably accused and they don't give him an award, the Disciplinary Committee do not reimburse him, he can appeal that very decision to the board but at that stage the board now knows that it's considering an appeal from a decision by the Discipline Committee and would then consider it. But if he felt that the Discipline Committee was fair enough and didn't bother to appeal to the board, then why bother the board at all?

MR. SHERMAN: Can Mr. Balkaran comment on why the wording is as it is in The MARN Act or is it there in error?

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I don't remember now why that provision in The MARN Act is different to this. The only explanation I can offer is, I thought that the board being a superior body was perhaps the board that should levy costs or reimburse a member when disciplinary action is taken.

MR. CHAIRMAN: 38(3) has been amended, is that acceptable?

MR. SHERMAN: How can a Disciplinary Committee come to the conclusion that its action was unwarranted?

MR. CHERNIACK: The investigating chairman's action is unwarranted. The Discipline Committee did not decide to charge him.

MR. SHERMAN: No, but this says, "through disciplinary action which in the opinion of the Discipline Committee was considered unwarranted."

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I think the Minister has a point because under 38(1) the disciplinary action is taken by the Discipline Committee.

MR. SHERMAN: How can a Disciplinary Committee decide that disciplinary action was unwarranted? Only somebody else could decide that.

MR. CHERNIACK: Well if it was unwarranted, then it means a decision under 38(1) was wrong and then there has to have been an appeal to the board, in which case the board at that time would reverse a decision of the Disciplinary Committee and give costs. Maybe that portion belongs under the appeal section under the powers of the decision of appeal by a board which is 43(5) I think. It may be that, but I think that the intention under The Nurses' Act was that if the Discipline Committee, having heard the enquiry which was launched by the investigation chairman, feels that it was unjustified — the proceedings were unjustified — then they could reimburse the member, or if they feel that it was justified they could charge them the costs. But if the point that Mr. Sherman makes that the decision under 38(1) was unfair, then clearly that provision belongs under Appeals.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, there is one problem with that. The matter might end at the stage where the Disciplinary Committee has made a decision under 38(1) and the member which doesn't wish to go to appeal, then what happens with respect to the question of costs? There is no award.

MR. CHERNIACK: There is no what?

MR. BALKARAN: The Discipline Committee has made no award as to costs.

MR. CHERNIACK: So any person aggrieved can appeal it?

MR. CHAIRMAN: 38(3) was a recommended amendment by the Minister of Health.
The Member for St. Vital.

MR. WALDING: Mr. Chairman, further to Mr. Balkaran's last point about if there were no decision as to costs that it would be not appealable. As I read 40(1), "any person who considers himself aggrieved by a decision of the Discipline Committee may appeal the decision to the board." Now surely a decision not to award costs is a decision of the committee itself. In other words, to make no decision is a decision to do so, and that would be appealable.

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: Never mind the award of costs, Mr. Chairman, that isn't what's bothering me. It's costs incurred through disciplinary action. For example the Disciplinary Committee decides to suspend a member for a period of one year. That costs that member a month let's say, while that member is appealing the action, it costs that member one month's wages, income, whatever that comes out to — \$1,600 or \$1,700, what ever it is — that member has incurred \$1,700 in costs through disciplinary action taken by the Discipline Committee.

The Discipline Committee cannot sit in judgment as to whether its disciplinary action was right or wrong, the board must, or some superior authority must make that decision and if it determines it was wrong, then the person should be reimbursed for the \$1,700 costs that were incurred through that disciplinary action. That's my point. I am not talking about the awarding of costs, I'm talking about the incurring of costs.

MR. CHERNIACK: The Medical Act says, "the council may pay by way of compensation out of the funds of the college such moneys as the council may determine, to any member against whom any complaint has been made, which when fully determined is found to have been frivolous or vexatious or to have been made without proper cause." So here they don't call it costs, they just say any money, such money as they determine. So that's the principle you're talking about.

MR. SHERMAN: Yes.

MR. CHERNIACK: Well then I guess that should be the board. So it means the board will be reviewing the decisions of the Discipline Committee whether or not there is an appeal. I think maybe this . . .

MR. SHERMAN: No.

MR. CHERNIACK: No? How can they decide on the costs?

MR. SHERMAN: Well in fact, I think probably the section in MARN doesn't need to be there. I think it should be covered under the appeal section. I really think it should be covered under the appeal section but it's in there as a separate section in that part of The MARN Act, and if it's going to be in here as a separate section in this part of Bill 21, I think it should be the board rather than the Discipline Committee.

MR. CHAIRMAN: Agreed? (Agreed)

MR. CHERNIACK: I don't know what you've agreed to, he said if it is. I don't know what we're agreeing to. We're saying he's right. Either it should stay as it is correctly in this bill or if it should be as in MARN then it should be moved out of this section into the appeal section. Is that not what you're saying?

MR. SHERMAN: That's right, Mr. Chairman, and I would propose that we delete it from this Bill which means we'll be operating with two different types of approach as far as those two bills are concerned and a year from now we'll correct one of them in Statute Law Amendments.

MR. CHAIRMAN: The proposed amendment is that 38(3) be deleted.

MR. CHERNIACK: Can I ask Mr. Sherman — and I'm certainly not quarreling with his suggestion — whether we couldn't shove in the sense of that into 43(5).

MR. SHERMAN: I think we could. I think we could and take it out of here.

MR. CHERNIACK: Yes, take it out of here and put it in 43(5).

MR. BALKARAN: Because 43(6) would be the costs specifically.

MR. CHERNIACK: That's costs of the appeal. But Mr. Sherman is talking about compensation, which is a very fair thing. I think it's a good thing to be able to do because they can do a lot of damage to a person by unfairly prosecuting them.

MR. WALDING: Mr. Chairman, I don't disagree with the later remarks there, but it still doesn't deal with my first concern of the board considering the matter of the award of costs also being the body to which an appeal can go. Unless you want to put in some stipulation there that the board would consider the matter of costs only after the time for appeal to the board has expired, otherwise it could consider them both at the same time.

MR. CHERNIACK: He's proposing to take that out completely.

MR. SHERMAN: I'd take the section right out of there. Wouldn't that meet your problem? I move deletion of 38(3), Mr. Chairman.

MOTION presented and carried.

MR. CHAIRMAN: Deletion of 38(3). 38 as amended — pass — the Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, in all fairness, and I agree with the proposal, but this takes away from this body the right of costs against the guilty member where we've given it in all the other Acts. I agree with what you've done but I think I'm honour-bound to point that out. Am I clear on what I just said?

MR. CHAIRMAN: 38 as amended — pass; 39 was deleted. 40(1) — pass; 40(2) — pass; 40(3) — pass — the Member for St. Johns.

MR. CHERNIACK: I hate to do this, Mr. Chairman, but I really am very unenthusiastic about the ability to charge costs to a member but I recognize the fact that it's in the other Acts and the principle has been accepted, and I'm wondering whether we couldn't look at 38(3) and say, with your permission, Mr. Chairman, "the Discipline Committee may award costs against any member of the association and on request the board may, or on request for consideration the board may reimburse any member for costs incurred where it's unwarranted." Now in doing that it means that you can go to the board after a case has been dismissed against the member, and the member could then go to the board and say hey board, do something about the harm done, the board could then do it and then it is a review but it's not under appeal, it's a review at that time. Does that make sense?

MR. SHERMAN: Yes, that makes sense, Mr. Chairman, because it's really that reimbursement that I'm concerned about. I think in throwing out the bath water here, we perhaps threw out the baby too. I agree that the Discipline Committee should have the right to award costs against any member of the association.

MR. CHERNIACK: And then of course, it is appealable.

MR. SHERMAN: That's right, then it's appealable. So, Mr. Chairman, if we can re-open 38(3) we will not delete it, we will re-write it accordingly. Mr. Balkaran has the sense of what we are saying and can produce the amended section very easily, I think.

MR. CHAIRMAN: To the members of the committee, pardon my total ignorance in this matter here. We are back to 38 again? 38(3) that we have deleted and passed two times, we are back to 38(3) and we're re-writing it again? Is that agreeable with all members of the committee? —(Interjection)— 38(3) as amended — is that agreed on?

MOTION presented and carried.

MR. CHERNIACK: Would you like to hear the suggestion again from Mr. Sherman — unless Mr. Balkaran has it.

MR. CHAIRMAN: Mr. Balkaran indicates he has the context of what is desired. Is that agreeable? 38(3),

once again re-opened and passed as amended. 38 — pass as amended. 39 has been deleted; 40(1) — pass; (2) — pass; (3) — pass; 41(1) — the Member for Springfield.

MR. ANDERSON: Mr. Chairman, I move

THAT Section 41(1) of Bill 21 be amended by adding the words "and the formal order of the investigation chairman or the discipline committee" in the fifth line thereof, immediately after the word "obtained".

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 41(1) as amended — pass — the Minister of Health.

MR. SHERMAN: Same as MARN 39(1), Mr. Chairman.

MR. CHAIRMAN: 41(1) as amended — pass; 41(2) — pass; 41 — pass; 42(1) — pass; (2) — pass; (3) — pass — the Member for St. Vital.

MR. WALDING: Just one minute, Mr. Chairman. The reference to suspension here and we made a change in the suspension back.

MR. CHAIRMAN: 42(3) — pass; (4) — pass; (5) — pass; 42 — pass. 43(1) — pass; (2) — the Member for Radisson.

MR. KOVNATS: Mr. Chairman, I move

THAT Section 43(2) of Bill 21 be amended by striking out the word "investigating" in the first line thereof and substituting therefor the word "investigation" and further by adding the words, "or the complaints committee" after the word "committee" in the second line thereof.

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 43(2) — as amended. Agreed?

MR. CHERNIACK: While Mr. Walding is getting that, under 43(1) in the second last line, "order of the investigation chairman"? Is he indeed an investigation or investigating chairman? — (Interjection)— Is that what he is?

MR. CHAIRMAN: Counsel says investigation chairman.

MR. CHERNIACK: Okay, I accept it.

MR. CHAIRMAN: 43(2) as amended — pass; 43(3) — pass; 43(4) — pass; 43(5) — pass; 43(6) — pass; 43 as amended — pass — the Member for St. Johns.

MR. CHERNIACK: I just want to make sure. It says, "as to the costs of an appeal", okay, no problem.

MR. SHERMAN: It's just the rewording of 38.

MR. CHAIRMAN: 43 as amended — pass — Mr. Balkaran.

MR. BALKARAN: I probably should draw the attention of committee now to 38 as we agreed to

amend it where the discipline committee awards costs and, I'm paraphrasing here, and the board may reimburse a member of any cost that may have been awarded against him. Then you look at 43(5)(d), "on appeal the board may confirm or vary the order of the discipline committee as to costs, or make a new order as to costs."

MR. SHERMAN: That's the award of costs though. We're talking in 38(3) of the reimbursement for costs incurred — one's expenses, I guess — and the other is costs.

MR. BALKARAN: Mr. Chairman, the way I've got 38 as I understood it, it reads as follows: "The discipline committee may award costs against any member of the association and the board may upon request of the member, reimburse the member for any costs awarded against the member by the discipline committee."

MR. SHERMAN: No. Absolutely not. It reads: "The discipline committee may award costs against any member of the association and the board may reimburse any member of the association for costs incurred through disciplinary action which in the opinion of the board, was unwarranted." — (Interjection)— Yes. I put, "in the opinion of the board", rather than "the opinion of the discipline committee."

MR. CHERNIACK: I thought we should provide that on request for consideration of the board. There has to be a formal way of going to the board.

MR. SHERMAN: It could be done that way, on formal request to the board, yes. But it's "reimburse any member of the association for costs incurred through disciplinary action."

MR. CHERNIACK: That's right.

MR. CHAIRMAN: Can we consider 38(3) as amended and passed?

MR. CHERNIACK: Can Mr. Balkaran now have what was discussed at this end of the table?

MR. BALKARAN: Okay, and I have it written down as follows, Mr. Chairman: "The discipline committee may award costs against any member of the association and the board may reimburse the member for any costs incurred by the member through disciplinary action."

MR. SHERMAN: Any member. "The board may reimburse any member", not just the member against whom cost was awarded.

MR. BALKARAN: Okay. May reimburse . . .

MR. SHERMAN: "Any member of the association and the board may reimburse any member for any costs incurred through disciplinary action."

MOTION on the amendment presented and carried.

MR. CHAIRMAN: If it's agreeable to the members I think we have the clarification on 38(3) which we

have passed. If that is agreeable we will proceed with Clause 43(6) — pass; 43 as amended — pass. 44(1) — pass — the Member for St. Johns.

MR. CHERNIACK: That's the one I was studying just before we were interrupted.

MR. SHERMAN: The last line provides a saving clause which was missing from one of the earlier pieces of legislation.

MR. CHERNIACK: What I'm missing however is — and I guess somebody deliberately left it — the phrase "including any order as to costs." I'm looking at the MARN Bill. "May appeal the matter" and that was in the MARN, "including any order as to costs."

MR. CHAIRMAN: The Minister of Health.

MR. SHERMAN: In this case would that matter not be covered under the present wording, 44(1) appealing to the Court of Queen's Bench; 44(1)(d) refers to "any person who is dissatisfied by a decision of the board made under section 43" and 43(5)(d) refers specifically to costs.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: 44(1) — pass; (2) — pass; (3) — pass; (4) — pass; (5) — pass; 44 — pass — the Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, did somebody — may I use the word — doctor this in the sense of MARN. The thing I've always been trying to do and succeeded only partly in, was the trial de novo and somebody switched this around and said, "may order a new hearing." I'm afraid that means "may order the discipline committee or the board to hold a new hearing", which I think would be a disaster if that's what is meant. You notice they also shoved in "that where they can't get the transcript, the court may hear the appeal on the basis of such material as may be available." Well I think that's unfair and wrong.

Now they're hearing an appeal on a partial evidence and then it says, "they may order a new hearing", which I assume means backed by the board, unless they do mean a trial de novo. I really think this a change which is adverse to the principle of a proper review.

MR. CHAIRMAN: Is the member speaking to 44(4)?

MR. CHERNIACK: Sure, that's what you called.

MR. SHERMAN: The complementary section in The MARN Act is 42(4), "where etc., etc., etc., the appeal before a judge of the Court of Queen's Bench shall be a trial de novo." I think the committee's disposition, Mr. Chairman, would be to have similar wording in Bill 21. That was a principle that we reached in the health bills earlier, "that 44(4) should be rewritten, conveying the sense of MARN, Clause 42(4)."

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 44(4) as amended — pass; 44(5) — pass; 44 as amended — pass. 45 — pass; 46 — pass — the Member for St. Johns.

MR. CHERNIACK: No, I'm sorry, I'm still on 45. You know we really have to watch these things so carefully to see where the changes are. I wish there was some way we could force somebody to tell us where they make the changes.

The MARN, if I may read it to those who don't have a copy, it says, "the association or the board or the discipline committee or the complaints committee or any member of the association or the board, is not liable for any loss or damage suffered by any person as a result of anything done by it or them in good faith under the administration of this Act". I see this has been turned around. I don't see that there's any difference really. I'm sorry I took your time.

MR. CHAIRMAN: 46 — pass; 47 — pass; 48(1) — pass — the Minister of Health.

MR. SHERMAN: I suppose the same question should be asked on this as was asked with respect to The Dietitians Act, Mr. Chairman.

I have no particular difficulty with it, but the question came up. I'd just point that out to the committee. With the dietitians we left it in, on the grounds that dietitians may in fact participate in procedures that might be called procedures affecting life and death situations."

MR. CHERNIACK: Mr. Chairman, may I just comment that although I question it, I believe that a professional has the first duty to the public and to his profession and that it is in order to expect them to tattle — is the word I was going to use — yes, I question it, but I still believe in the principle.

MR. SHERMAN: All right — pass;

MR. CHAIRMAN: 48(1) — pass; (2) — pass; (3) — pass; 48 — pass; 49 — pass.

MR. SHERMAN: I think it's consistent.

MR. CHERNIACK: I'm just surprised me I don't find it in MARN. It must be here.

MR. CHAIRMAN: 50(1) — pass; 50(2) — pass; 50(3) — pass; 50(4) — pass; 50(5) — pass; 50(6) — pass; 50(7) — pass; 50(8) — pass; 50(9) — pass; 50(10) — the Member for St. Vital.

MR. WALDING: Just give me a moment or two. Mr. Chairman, I know it's in The MARN Act, but it says, "that no person shall serve as a member of council for more than two consecutive terms." I wonder why we should be imposing that as a limitation on the membership, if it's their wish and so elect or wish to elect that member of the executive for a third term. Is it up to us to tell the membership who they should be represented by?

MR. CHAIRMAN: The Member for St. Johns.

MR. CHERNIACK: Well I'd like to volunteer an answer. As I read it — I'm never too excited about this advisory council — they don't have any powers at all; they are strictly advisory; they give such recommendations as will enable the board which need or need not take it — and I can see the value

of seeing to it that the membership rotates so that more and more people become involved and don't fall into a routine, but rather are thinking of new ideas. That's my look at it. That's the only answer I can give, of the way I react, but mainly it's because I don't think it's important.

MR. WALDING: I'm not suggesting it's a big issue. I wonder if the Minister has a reaction to it.

MR. SHERMAN: Mr. Chairman, I must say that neither the Minister nor the government is asking for it. I would describe the situation to the Committee as a request from the association, we have no objection. The association has requested it and perhaps Mrs. LePers would like to speak to it. I think it's simply to ensure a continual infusion of new ideas and prevent ongoing control by what can become sort of a self-perpetuating group.

MR. CHERNIACK: The principle of the advisory council was something the Minister did want in the connection of nurses because the nursing education was involved and the Minister wanted a say, and I think the Minister of Education wanted a say in what was going but a matter by which the Ministers of Education and Health could be advised on education. That of course, doesn't apply to this one, —(Interjection)— no and need not.

MR. CHAIRMAN: Agree to proceed? Clause 50(7) — pass; 50(8) — pass; 50(9) — pass; 50(10) — pass; 50 — pass. 51(a) — pass; (b) — pass; (c) — the Member for Radisson.

MR. KOVNATS: Mr. Chairman, I move that Clause 51(c) of Bill 21 be amended by striking out the word "subsection" in the 4th line thereof and substituting therefor the word "section".

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 51 — Mr. Balkaran.

MR. BALKARAN: Oh, it should be in both, I'm sorry.

MR. CHAIRMAN: 51(c) as amended — pass; (a), (b) and (c) as amended — Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I wonder if the members of the Committee would change the word "educational" in about four different places in clauses (a), (b) and (c), so it simply reads "physiotherapy education programs" as opposed to "educational".

MOTION on changes to the amendment presented and carried.

MR. CHAIRMAN: 51 — as amended — pass; 52 — pass; 53(1) — pass; 53(2) — pass — the Member for St. Johns.

MR. CHERNIACK: That number would have to be changed, wouldn't it?

MR. CHAIRMAN: I think we will be asking for all the numbering to be changed.

MR. BALKARAN: I would try to see if I could renumber, that I get back into the printed numbers.

MR. CHAIRMAN: 53(3) — pass; 53(4) — pass; 53(5) — pass; 53 — pass — the Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I'm back to 53(3) and again I'm amused by the difference with MARN. This says "the government shall pay to the prosecutor such portion as may be expedient." The MARN says, "the government may pay." Is it possible that somebody has the right to sue the government and say, you shall pay me what is expedient in the opinion of the court? There must be a reason for the different wording.

MR. SHERMAN: I don't know the reason if there is one, Mr. Chairman, I'd like to ask Mr. Balfour if there is a reason or if this was an inadvertent matter.

MR. BALFOUR: Thank you, Mr. Chairman, I believe it's inadvertent and an oversight.

MR. CHAIRMAN: Suggested amendment under 53(3). Could somebody indicate the amendment?

MR. SHERMAN: I move, Mr. Chairman, 53(3) be amended by deleting the word "shall" in the 2nd line thereof and inserting therefor the word "may".

MR. CHERNIACK: You may have to say "as it may deem expedient." Well the wording in mine is, "as it considers just and expedient." But you have to give the discretion to the government.

MR. BALKARAN: Might I ask why do we need to say "just and expedient" or any phrase to qualify, "that the government may pay such portion of the funds towards the payment of costs of the prosecution."

MR. CHAIRMAN: 53(3) as amended — is that agreed?

MR. BALKARAN: Just a minute. When you necessitate a further change. But we need to keep the phrase, Mr. Chairman, if we could strike out "as may be expedient" and simply let the subsection read: "Such portion of the funds recovered towards the payment of the costs of the prosecution as the government considers just and expedient", fair and just, or whatever phrase you want to use.

MR. CHERNIACK: Frankly, I don't know why the section isn't as in MARN.

MR. SHERMAN: That may be the easier thing, Mr. Chairman, simply to move that 53(3) be replaced by a new clause 53(3) similar to 51(3) in The MARN Act.

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 53(3) as amended — pass; 53(4) — pass; 53(5) — pass; 53 as amended — pass. 54 — pass — the Member for St. Johns.

MR. CHERNIACK: I'm sorry, I'm ahead of you for a change.

MR. CHAIRMAN: 55 — pass; 56 — the Member for Radisson.

MR. KOVNATS: Mr. Chairman, I move that Clause 56(a) of Bill 21 be amended by striking out the words "respecting a member" in the second line thereof.

MOTION on the amendment presented and carried.

MR. CHAIRMAN: 56(a) as amended — pass; 57 — pass — the Minister of Health.

MR. SHERMAN: On 57, do you want to add that sunset clause? I move that 57 be amended, Mr. Chairman, by adding after the word "Act" in the fourth line, the words "or until December 31, 1981, or whichever is the earlier," whichever sooner occurs.

MOTION on the amendment presented and carried.

MR. CHAIRMAN: Clauses 57 as amended, 58, 59 and 60 were read and passed. Preamble — pass; Title — pass; Bill as amended be reported — pass.

MR. SHERMAN: I move Committee rise, Mr. Chairman.

MOTION presented and carried.

MR. CHAIRMAN: Committee rise.